IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6732 OF 2005

Ichalkaranji Vyapari Sahkari Pat Sanstha
Maryadit : Petitioner
(Orig.Applicant/
Disputant)

V/s.

The Deccan Co-operative Spinning
Mills Ltd. & Ors. : Respondents

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Mr.T.S.Ingale for the petitioner.

Mr.R.M. Patne, Asstt. Govt. Pleader, for the respondent nos.2 & 3.

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CORAM : S.A. BOBDE, J.

October 5, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Patne, the learned Asstt. Govt. Pleader, appears and waives service of rule on behalf of the respondent nos.2 & 3.

Heard by consent.

2. The petitioner has challenged the impugned order dated 1.2.2003 passed by the Joint Director (Administration), Handlooms, Powerlooms & Textiles, Maharashtra State, Nagpur, refusing permission to the petitioner to initiate recovery proceedings against the Liquidator. The reason given by the Joint Director is that under section 105 of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the "Act", the Liquidator is authorised to investigate the claim of the society in accordance with the provisions of section 105 and the prescribed priority. This constitutes a misdirection, in view of the fact that the Registrar was required to apply his mind to various other factors such as the prima facie entitlement of the petitioner to institute a suit for recovery of the dues and the petitioner’s interest. Moreover, in regard to this very society i.e. The Deccan Co-operative Spinning Mills Ltd., there is a judgement passed by a single Judge of this Court in Writ Petition no.3710 of 2003 on 10.7.2003 which has been upheld by a Division Bench of this Court in Letters Patent Appeal no.113 of 2003 on 25.9.2003 where this Court has held that it is imperative on the Registrar to grant leave as prayed unless there are exceptional circumstances which are borne out from the record. I am, therefore, of view that the impugned order is vitiated since it does not record any

exceptional circumstances and does not consider the prima entitlement of the petitioner to institute these proceedings.

3. In the result, the impugned order is set aside and the application preferred by the petitioner stands allowed. The rule is made absolute in the aforesaid terms.

S.A. BOBDE, J.